



**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1952**

**Docket No. OSHA 2012-0029**

**RIN [1218-AC89]**

**Hawaii State Plan for Occupational Safety and Health; Operational Status**

**Agreement Revisions**

**AGENCY:** Occupational Safety and Health Administration, Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** This document announces revisions to the Operational Status Agreement between the Occupational Safety and Health Administration (OSHA) and the Hawaii State Plan, which specifies the respective areas of federal and state authority, and under which Hawaii will reassume additional coverage.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:**

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For general and technical information: Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, Room N-3700, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington DC 20210; telephone: (202) 693-2200; email: [kalinowski.doug@dol.gov](mailto:kalinowski.doug@dol.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Hawaii administers an OSHA-approved state plan to develop and enforce occupational safety and health standards for public and private sector employers, pursuant to the provisions of Section 18 of the Occupational Safety and Health Act (the Act). Pursuant to Section 18(e) of the Act, OSHA granted Hawaii “final approval” effective April 30, 1984 (49 FR 19182). A final approval determination results in the relinquishment of federal concurrent enforcement authority in the state with respect to occupational safety and health issues covered by the plan. 29 U.S.C. 667(e).

From 2009-2012, the Hawaii State Plan faced major budgetary and staffing restraints that significantly affected its program. Therefore, the Hawaii Director of Labor and Industrial Relations requested a temporary modification of the state plan’s approval status from final approval to initial approval, to permit exercise of supplemental federal enforcement activity and to allow Hawaii sufficient time and assistance to strengthen its state plan. On June 22, 2012, a Notice of Proposed Rulemaking was published and on September 21, 2012, OSHA published a Final Rule in the Federal Register (77 FR 58488) that modified the Hawaii State Plan’s “final approval” determination under Section 18(e) of the Act, transitioned the Plan to “initial approval” status under Section 18(b) of the Act, and reinstated concurrent federal enforcement authority over occupational safety and health issues in the private sector. That Federal Register notice also provided notice of the Operational Status Agreement (OSA) between OSHA and the Hawaii Occupational Safety and Health Division (HIOSH), which specified the respective areas of federal and state authority.

After the first year of the planned three-year developmental period, Hawaii's Department of Labor and Industrial Relations has taken the initial steps in rebuilding the capacity of HIOSH. Hawaii is committed to redeveloping its State Plan, and has increased its staff recruitment to reach its staffing benchmark, and has increased its inspection activity by 148% over the prior fiscal year. HIOSH and OSHA have worked together to strengthen the State Plan. A meeting between federal and state representatives on September 11-13, 2013 discussed the successes and challenges of the first year under the OSA and worked to clarify the next steps needed to be taken as the state agency further develops. OSHA and HIOSH agreed to amend the OSA to return greater responsibility to HIOSH for Fiscal Year 2014. Accordingly, this final rule amends OSHA regulations to reflect this change in the OSA between the parties by removing the reference to the specific 2012 OSA.

#### **Notice of Revisions to the Operational Status Agreement**

Federal OSHA and HIOSH will exercise their respective enforcement authority according to the terms of the 2012 OSA between OSHA and HIOSH, which specifies the respective areas of federal and state authority, with revisions agreed to in September 2013. Under the 2012 OSA, Federal OSHA retained coverage over all Federal employees and sites, private sector maritime activities, private sector employees within the secured borders of all military installations where access is controlled, and United States Postal Service including contract workers and contractor operated facilities, and assumed coverage over agriculture and most of general industry including facilities that include processes covered by the Process Safety Management standard (29 CFR 1910.119) as well as provisions of general industry and construction standards (29 CFR

1910 and 1926) appropriate to hazards found in that employment. Hawaii retained coverage over the construction industry, transportation and warehousing, and state and local government as an employer. All terms of the 2012 OSA remain in effect, except that Hawaii will resume responsibility over Manufacturing (NAICS 31 through 33) except Refineries (NAICS 324) and any other private sector facilities that include processes covered by the Process Safety Management standard (29 CFR 1910.119). Federal OSHA will also enforce provisions of the Act and of the general industry and construction standards appropriate to hazards found in facilities with processes that are covered by the Process Safety Management standard. Further, the revised OSA provides a mechanism for the most-available agency to respond to life-threatening situations on neighbor islands.

### **Regulatory Flexibility Analysis and Unfunded Mandates**

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (as amended), OSHA examined the regulatory requirements of the final rule to determine whether it would have a significant economic impact on a substantial number of small entities. Since no employer of any size will have any new compliance obligations, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. OSHA also reviewed this final rule in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 et seq.) and Executive Order 12875 (56 FR 58093). Because this rule imposes no new compliance obligations, it requires no additional expenditures by either private employers or State, local, and tribal governments.

## **Federalism**

Executive Order 13132, “Federalism,” (64 FR 43255, August 10, 1999) emphasizes consultation between Federal agencies and the States and establishes specific review procedures the Federal government must follow as it carries out policies which affect State or local governments. OSHA has consulted extensively with Hawaii about this modification of the Operational Status Agreement. Although OSHA has determined that the requirements and consultation procedures provided in Executive Order 13132 are not applicable to approval decisions under the Act, which have no effect outside the particular State, OSHA has reviewed this final rule, and believes it is consistent with the principles and criteria set forth in the Executive Order.

## **Administrative Procedures**

This Federal Register document is designated a “final rule.” That designation is necessary because OSHA publishes a general description of every state plan in 29 CFR part 1952. Because they are set forth in the Code of Federal Regulation, these descriptions can be updated only by publishing a “final rule” document in the final rules section of the Federal Register. Such rules do not contain any new federal regulatory requirements, but merely provide public information about the state plan.

OSHA finds that good cause exists for making this rule effective immediately upon publication in the *Federal Register*. Today’s action is solely a change in Federal OSHA’s procedures. It does not impose any new compliance obligations on affected employers, since Hawaii’s safety and health standards and regulations are virtually all identical to OSHA’s regulations. There are a very few instances in which Hawaii has

more stringent requirements; however these state standards remain in effect and OSHA will make referrals to the state when needed. Therefore, employers' compliance obligations are not legally affected by the amendment to the OSA announced in this notice. For these reasons, public notice and comment are unnecessary, and good cause exists for making this final rule effective upon publication in the Federal Register. Accordingly, OSHA finds that public participation is unnecessary, and this rule is effective upon publication in the Federal Register.

#### **List of Subjects in 29 CFR Part 1952**

Intergovernmental relations, Law enforcement, Occupational safety and health.

#### **AUTHORITY AND SIGNATURE**

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, D.C., authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 1-2012 (77 FR 3912), and 29 CFR part 1902.

Signed in Washington, DC, on February 10, 2014.

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**David Michaels, PhD, MPH,**  
*Assistant Secretary of Labor for Occupational Safety and Health.*

Accordingly, for the reasons set forth in the Preamble, 29 CFR Part 1952 is amended as set forth below.

**PART 1952 – [AMENDED]**

1. The authority citation for part 1952 continues to read as follows:

AUTHORITY: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902; Secretary of Labor's Order No. 1-2012 (77 FR 3912).

**Subpart Y – Hawaii**

2. Amend § 1952.314 by revising paragraph (b) to read as follows:

**§ 1952.314 Level of Federal enforcement.**

\* \* \* \* \*

(b) To provide a workable division of enforcement responsibilities, Hawaii and Federal OSHA have entered into an operational status agreement. Electronic copies of the agreement are available at:

<http://www.osha.gov/dcsp/osp/stateprogs/hawaii.html>.

**BILLING CODE: [4510-26-P]**

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